IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 7518 of 1998

Between:

V.Sukhdev S/o.Venkatapathy
R/o.Secretary,Jagannadhagiri PACS R/o.Kajuluru Mandal
E.G.Dist.

..... PETITIONER

AND

1 The Govt.of A.P Rep.by its Secretay,Co-operation Dept
Secretariat Hyderabad.
2 The Dist Cooperative Officer Kakinada
E.G.Dist.
3 Dy.Registrar of Cooperative Societies Kakinada
E.G.Dist.
4 Jagannadhagiri Primary Agrl Coop.Society Rep.by its President
Jagannadhagiri,Kajuluru Mandal E.G.Dist.
5 The General Manager Dist Cooperative Central Bank Ltd.,
Kakinada E.G.Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned proceedings Rc.No.3430/96E dated 15-1-1998 issued by the 3rd respondent is illegal, arbitrary and violative of procedure contemplated under section 60 of the A.P.Co-operative Societies Act and to declare that the Revenue Recovery Act is not applicable to the orders passed under the A.P.Co-operative Societies Act and pass such other order or orders.

Counsel for the Petitioner: MR.A.SATYA PRASAD

Counsel for the Respondents 1 to 3: Government Pleader for Cooperation.

Counsel for the Respondent No. 4: Mr. S. Srinivas Reddy

Counsel for the Respondent No.5: MR.C.V.MOHAN REDDY

The Court made the following :

ORDER:

Heard both sides and at their request the main Writ Petition itself is taken up for disposal.

The petitioner, who is Paid Secretary, filed this Writ Petition seeking to assail the impugned orders dated 15.1.1998, passed by the third respondent herein, purported to have been filed under Section 68 of the Andhra Pradesh Cooperative Societies Act.

The learned counsel appearing for the petitioner submits that having regard to the fact that unless there is proper enquiry, the report could not possibly be relied on for initiating any surcharge proceedings, therefore, the impugned proceedings are totally vitiated and hence, liable to be set aside.

Having heard the learned counsel on either side and also on perusal of the material on record, it is seen that as against the surcharge proceedings, under Section 60 of the A.P. Cooperative Societies Act, a regular appeal has been provided under Section 76 thereof, in the Statute. In view of the same, it is not open for the petitioner to straight away approach this Court under Article 226 of the Constitution of India without exhausting alternative remedy. The learned counsel appearing for the petitioner sought to place reliance on the decision of this court reported in S.R.S. RAO VS. PRESIDENT, K.I AND P. DEPARTMENT. S.D.E. CO.OP.C. SOCIEITY LIMITED, wherein, this court held such proceedings are vitiated. Having regard to the nature of appeals as provided, there is a bar under Section 21 of the Act. Even on a reading of the said decision, it does not say that the party can avail extraordinary jurisdiction of this court under Article 226 of the Constitution of India without availing any remedy of appeal under Section 76 of the Act. It is also now established, as rightly contended by the petitioner, if there is any violation of principles of natural justice, availability of alternative remedy is not a

ground to reject the petitioner under Article 226 of the Constitution of India.

Having regard to the facts and circumstances of this case, where the petitioner seeks several other questions on merits and more so, liability has been fastened on him, in surcharge proceedings, under Section 60 of the said Act, all these aspects can as well properly be estimated more comprehensively and more aptly in regular appeal rather than under Article 226 of the Constitution of India. Hence, I do not find any justification to invoke the jurisdiction of this court under Article 226.

Accordingly, the Writ Petition is dismissed with liberty to the petitioner to avail the remedy of appeal, under Section 76 of the Act, within a period of four weeks from today. On filing of such appeal, the appellate authority shall dispose of the appeal on merits in accordance with law after giving opportunity to both sides. To enable the petitioner to file the appeal and obtain necessary interim orders therein, the impugned proceedings shall be given effect to for a period of four weeks. No costs.

B. PRAKASH RAO, J

Dated: 16.12.2004

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To

1 The Govt.of A.P Rep.by its Secretay,Co-operation Dept
Secretariat Hyderabad.
2 The Dist Cooperative Officer Kakinada
E.G.Dist.
3 Dy.Registrar of Cooperative Societies Kakinada
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4 Jagannadhagiri Primary Agrl Coop.Society Rep.by its President
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5 The General Manager Dist Cooperative Central Bank Ltd.,
Kakinada E.G.Dist.

6. Two CCs to G.P. for Cooperation, High Court of A.P., Hyderabad (OUT)

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